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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,321	08/03/2001	Paul Joseph Berlowitz	CJB-0106	8067

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EXAMINER

MEDLEY, MARGARET B

ART UNIT PAPER NUMBER

1714

DATE MAILED: 07/29/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922321

Applicant(s)

BERLOWITZ et al

Examiner

MEDLEY

Group Art Unit

1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

A request for a continuation-in-part of parent application U.S. Serial No. 09/562,454, filed on May 02, 2000, including the fees was filed on August 03, 2001. Applicants' request has been granted in the pending US application 09/922,321 and an action on the merits follows.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. F-T having $338^{\circ}\text{C} < T_{90} < 538^{\circ}\text{C}$; preferably $343^{\circ}\text{C} < T_{90} < 482^{\circ}\text{C}$; $349^{\circ}\text{C} < T_{90} < 427^{\circ}\text{C}$; and $349^{\circ}\text{C} < T_{90} < 371^{\circ}\text{C}$ and a cold filter plugging point of $\leq +5^{\circ}\text{C}$; more preferably $< -15^{\circ}\text{C}$; most preferably $< -30^{\circ}\text{C}$ is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The disclosure at page 4 paragraph [0009] and bridging paragraph [0018] of pages 8-9 of the instant application demonstrate that the said particulate features were considered essentially by the applicant, is not reflected in the claims which are rejected..

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 13 and 21 (and their dependent claims) are indefinite for $343^{\circ}\text{C} < \text{T}_{90}^{\circ}\text{C} < 538^{\circ}\text{C}$ which has not been explicitly set forth in the disclosure. Claim 2 and 14 (and their dependent claims) are indefinite for $349^{\circ}\text{C} < \text{T}_{90}^{\circ}\text{C} < 338^{\circ}\text{C}$ that is outside of the independent claim range. Claims 3 and 15 (and their dependent claim) are indefinite for $371^{\circ}\text{C} < \text{T}_{90}^{\circ}\text{C} < 482^{\circ}\text{C}$ that is not explicitly set forth in the instant disclosure. Claim 4 and 16 (and their dependent claim) are indefinite for $371^{\circ}\text{C} < \text{T}_{90}^{\circ}\text{C} < 427^{\circ}\text{C}$ that is not explicitly set forth in the instant disclosure. Claims 5 and 13, 6 and 17, and 7 and 18 are indefinite in that the cold filter plugging point does not correspond to the distillate T90 range as set forth in the instant application. Claims 12, 20 and 22 are indefinite for a cetane > 75 that is not explicitly set forth in the instant application disclosure at page 4 for a cetane > 65 , preferably a cetane > 70 . Claim 21 (and its dependent claim 22) is indefinite for a method of making for failing to recite any active, positive steps delimiting how the method is practice.

The claims have not been treated on the merits in that it is unclear to the examiner from reviewing the record as to the intended scope of the pending claims.

The prior art cited but not applied further teaches method of use, method of manufacture and fuel compositions of the same nature as claimed by applicants.

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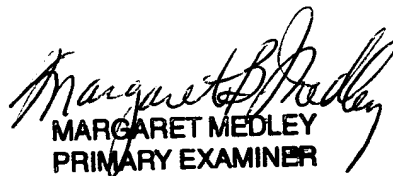
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310 and for after final 703-872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

MBMedley:evh

7/15/02


MARGARET MEDLEY
PRIMARY EXAMINER